

Sent: Friday, March 13, 2009 11:56 AM
To: Senator Slossberg; Rep. Spallone, James
Subject: Do Not Eliminate the Office of the Property Rights Ombudsman

I cannot attend the hearing on Monday as I have to be in court.

I write in my personal capacity only, not on behalf of any clients past, present or future.

I am a lawyer involved in eminent domain. I chair the annual Connecticut Bar Association conference on property rights and I co-edited the ABA book "Eminent Domain Use and Abuse: Kelo in Context."

I represent both governments and property owners in eminent domain.

I believe the property rights ombudsman saves us all much more money than it costs.

Only Utah (the first) and Missouri (the third) also have property rights ombudsmen. Missouri is too new to have any history.

In Utah, the DOT has reported that it has cut its litigation at least in half (see slide 21 <http://tinyurl.com/cz7koy>) and maybe by two-thirds (see second cite below) because the office of the property rights ombudsman does what no one else can -- it gives ordinary people (like Susette Kelo) equal footing with the government. The ombudsman empowers them and neutralizes the appearance of unequal bargaining power that often occurs when government comes up against individuals.

Perhaps most of it is perception, and some of it is real, but based on my close examination of the Kelo case I believe that if the property rights ombudsman had been in existence at the time of the proposed taking the litigation could have been avoided. Think what that would have saved (except I wouldn't have my book and Wes Horton wouldn't be on 20/20 ...<http://abcnews.go.com/Politics/Story?id=6992723&page=2>).

Finally, I have a case coming into the office now where the ombudsman has already spent an hour and half on the phone with the client's lawyer (soon to be my co-counsel). The ombudsman doesn't know I will enter the case. Based on what I have heard thus far, the ombudsman may be able to mediate a resolution that could save ConnDOT and our client from litigation. If he is out of the picture, protracted litigation is likely and the cost of that for the state and the property owners -- in just this one case involving a single parcel valued at around \$1 million -- will be several times what the state pays for the office to be open for a year. Multiply that by however many cases are resolved and you have a very large savings.

The ombudsman is a smart investment for the state and for property owners. It saves both sides time, money and heartache. Wouldn't you rather have the Attorney General's lawyers working on other, more productive matters? Wouldn't property owners be more willing to negotiate with the state if they continued to have both the perception and the reality of a level playing field?

Ben Franklin famously said: "an ounce of prevention is worth a pound of cure" -- why would we close the ombudsman's office and then spend hundreds of thousands of dollars, millions of dollars, in unnecessary litigation?

Please take a look at this background information:

see slide 21

http://cms.transportation.org/sites/rightofway/docs/2006_ch03s01.pdf or <http://tinyurl.com/cz7koy>

http://findarticles.com/p/articles/mi_qn4188/is_20070702/ai_n19340066
or <http://tinyurl.com/dxldv4>

"Since it began working with the ombudsman's office 10 years ago, the Utah Department of Transportation said it has less conflict with land owners and fewer forceful takings of property. Seven years ago, the agency condemned 23.4 percent of the properties it needed to acquire, and now it condemns about 7.1 percent."

http://www.reason.org/commentaries/gilroy_20080417.shtml or
<http://tinyurl.com/c59tk7>

http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_lrd_50.pdf or
<http://tinyurl.com/d6u5sx> pages 20-21

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